99TH CONGRESS
1ST SESSION

S. 837

To amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions of that Act.

IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day, FEBRUARY 18), 1985

Mr. HEINZ (for himself, Mr. GLENN, Mr. CHILES, Mr. PRESSLER, Mr. MELCHER, Mr. WILSON, Mr. BURDICK, and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions of that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Patient and Program Protection Act for Medicare and Medicaid".

(b) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Whenever in this Act an amendment is expressed in terms of

an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

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SEC. 2. EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128 (42 U.S.C. 1320a–7) is amended to read as follows:

"EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS

"SEC. 1128. (a) MANDATORY EXCLUSION.—The Secretary shall exclude from participation in the programs under title XVIII the following individuals or entities:

"(1) CONVICTION RELATING TO MEDICARE OR STATE HEALTH CARE PROGRAM.—Any individual or entity that has been convicted of a criminal offense related to such individual's or entity's participation in the delivery of items or services under title XVIII or

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under any State health care program (as defined in subsection (g)).

"(2) CONVICTION RELATING TO FRAUD OR PATIENT ABUSE.—Any individual or entity that has been convicted, under Federal or State law, in connection with the delivery of health care items or services or with respect to any act or omission in a program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense relating to—

"(A) fraud, theft, embezzlement, breach of fiduciary responsibility, or financial abuse, or

"(B) neglect or abuse of patients.

"(3) CONVICTION RELATING TO OBSTRUCTION OF AN INVESTIGATION.—Any individual or entity that has been convicted, under Federal or State law, in connection with the interference or obstruction of any investigation into any criminal offense described in paragraph (1) or (2).

"(4) CONVICTION RELATING TO CONTROLLED SUBSTANCE.—Any individual or entity that has been convicted, under Federal or State law, of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance or other criminal offense relating to a controlled substance.

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"(5) SUBMISSION OF FALSE CLAIMS.—Any individual or entity that the Secretary determines has knowingly and willfully made, or caused to be made, any false statement or representation of a material fact for use in an application for payment under title XVIII or a State health care program, or for use in determining the right to a payment under such title or program.

"(6) FRAUD, KICKBACKS, AND OTHER PROHIBITED ACTIVITIES.—Any individual or entity that the Secretary determines has committed an act which is described in section 1128B.

"(b) PERMISSIVE EXCLUSION.—The Secretary may exclude from participation in the programs under title XVIII the following individuals and entities:

"(1) LICENSE REVOCATION OR SUSPENSION.—Any individual or entity—

"(A) whose license to provide health care has been revoked or suspended by a State licensing authority or who otherwise lost such a license for reasons bearing on the individual's or entity's professional competence, professional conduct, or financial integrity, or

"(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned

the individual's or entity's professional competence, professional conduct, or financial integrity.

"(2) SUSPENSION FROM FEDERAL HEALTH CARE PROGRAM.—Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under any Federal program, including programs of the Department of Defense or the Veterans' Administration, involving the provision of health care, or under a State health care program (as defined in subsection (g)).

"(3) SUBMISSION OF FALSE CLAIMS.—Any individual or entity that the Secretary determines—

"(A) has submitted or caused to be submitted bills or requests for payment under title XVIII or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's customary charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

"(B) has furnished items or services to patients (whether or not eligible for benefits under

title XVIII or a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

"(C) is—

"(i) a health maintenance organization (as defined in section 1903(m)) providing items and services under a State plan approved under title XIX or

"(ii) an entity furnishing services under a waiver approved under section 1915(b)(1), and has failed in a substantial number of cases to provide medically necessary items and services that are required under law or the contract with the State under that title; or

"(D) is an entity providing items and services as an eligible organization under a contract under section 1876 and has failed in a substantial number of cases to provide medically necessary items and services that are required under law or such contract.

"(4) EXCLUSION OF ENTITIES.—Any entity with respect to which the Secretary determines that a person—

"(A)(i) with an ownership or control interest (as defined in section 1124(a)(3)) in that entity or

"(ii) who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of that entity—

is a person—

"(B)(i) who has been convicted of any offense described in paragraph (1), (2), (3), or (4) of subsection (a);

"(ii) against whom a civil monetary penalty has been assessed under section 1128A; or

"(iii) who has been excluded from participation under a program under title XVIII or under a State health care program.

"(5) FAILURE TO DISCLOSE REQUIRED INFORMATION.—Any entity that did not fully and accurately make any disclosure required of it by section 1124 or section 1126.

"(6) FAILURE TO SUPPLY REQUESTED INFORMATION.—Any disclosing entity (as defined in section 1124(a)(2)) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to such entity by the Secretary—

"(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000, or

"(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor.

"(7) FAILURE TO SUPPLY PAYMENT INFORMATION.—Any individual or entity furnishing items or services for which payment may be made under title XVIII or a State health care program that fails to provide such information as the Secretary finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary as may be necessary to verify such information.

"(8) FAILURE TO PROVIDE IMMEDIATE ACCESS TO NECESSARY INFORMATION.—Any individual or entity that fails to grant immediate access, upon rea-

sonable request (as defined by the Secretary in regulations), to any of the following:

"(A) To the Secretary, or to the agency used by the Secretary, for the purpose specified in the first sentence of section 1864(a) (relating to compliance with conditions of participation or payment).

"(B) To the Secretary or the State agency in order to perform the reviews and surveys required under State plans under paragraphs (26), (31), and (33) of section 1902(a) and under section 1903(g).

"(C) To the Inspector General of the Department of Health and Human Services for the purpose of review of records, documents, and other data necessary to the performance of the statutory functions of the Inspector General.

"(D) To a State medicaid fraud control unit (as defined in section 1903(q)) for the purpose of conducting activities described in that section.

"(c) NOTICE OF EXCLUSION.—(1) An exclusion under this section or under section 1128A shall only be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

"(2) Such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion; except that such exclusion shall not apply to payments made under title XVIII or under a State health care program for—

"(A) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

"(B) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,

until the passage of 30 days after the effective date of the exclusion.

"(d) HEARING AND JUDICIAL REVIEW ON EXCLUSIONS UNDER THIS SECTION.—Any individual or entity that is excluded from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

"(e) NOTICE TO STATES AND EXCLUSION UNDER STATE HEALTH CARE PROGRAMS.—(1) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health

care program of the fact and circumstances of each exclusion effected under this section or section 1128A.

"(2) Each State health care program shall provide for the exclusion from participation in that program of each individual and entity during any period in which the individual or entity is excluded from participation in the programs under title XVIII pursuant to this section or section 1128A, except that the Secretary may waive such required exclusion with respect to an individual or entity if the Secretary receives and approves a request for such waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

"(3) The Secretary shall—

"(A) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded from participation under this section or section 1128A of the fact and circumstances of such exclusion,

"(B) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

"(C) request that such State or local agency or authority keep the Secretary and the Inspector General in the Department of Health and Human Services

fully and currently informed with respect to any actions taken in response to such request.

"(f) PERIOD OF EXCLUSION.—(1)(A) Except in the case of an exclusion effected under subsection (b)(8), the notice of exclusion under subsection (c) and the written notice under section 1128A shall state the earliest date (which, in the case of an exclusion effected pursuant to subsection (a), may not be less than five years after the date of the exclusion) on which the individual or entity may be reinstated under this subsection.

"(B) In the case of an exclusion effected under subsection (b)(8), the notice of exclusion under subsection (c) shall state the period of the exclusion, which shall be equal to the sum of—

"(i) the length of the period in which the individual or entity failed to grant immediate access described in subsection (b)(8), and

"(ii) an additional period, not to exceed 90 days, set by the Secretary.

"(2) An individual or entity excluded from participation under this section (other than under subsection (b)(8)) or section 1128A may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the initial period of exclusion and at such other times as the Secretary may provide, for reinstatement as a participant in the

programs under title XVIII and under State health care programs.

"(3) The Secretary shall provide for such reinstatement if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

"(A) there is no basis under subsection (a) or (b) or section 1128A(a) for a continuation of the exclusion, and

"(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

"(4) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program of the fact and circumstances of each reinstatement made under this subsection.

"(g) DEFINITION OF STATE HEALTH CARE PROGRAM.—For purposes of this section and sections 1128A and 1128B, the term 'State health care program' means—

"(1) a State plan approved under title XIX,

"(2) any program receiving funds under title V or from an allotment to a State under such title, or

"(3) any program receiving funds under title XX or from an allotment to a State under such title.".

SEC. 3. CIVIL MONETARY PENALTIES.

(a) GROUNDS FOR IMPOSITION.—(1) Subsection (a)(1) of section 1128A (42 U.S.C. 1320a-7a) is amended—

(A) by striking out "is for a medical or other item or service" in the matter before subparagraph (A),

(B) by inserting "is for a medical or other item or service" in subparagraph (A) after "(A)",

(C) by striking out "or" at the end of subparagraph (A),

(D) by striking out "(B)" in subparagraph (B) and inserting in lieu thereof "(C) is for a medical or other item or services",

(E) in subparagraph (C) (as so redesignated), by striking out "section 1128" and all that follows through "proceedings;" and inserting in lieu thereof "this section or sections 1128, 1156, 1160(b) (as in effect on September 2, 1982), 1862(d) (as in effect on the date of the enactment of the Patient and Program Protection Act for Medicare and Medicaid), or 1866(b);", and

(F) by inserting after subparagraph (A) the following new subparagraph:

"(B) the person knows or has reason to know is false or fraudulent, or", and

(2) Subsection (a)(2)(B) of such section is amended by inserting "(or other requirement of a State plan under title XIX)" after "State agency".

(3) Subsection (a) of such section is further amended by adding at the end thereof the following new sentence: "In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the programs under title XVIII and in any State health care program.".

(4) No civil penalty or assessment may be imposed under section 1128A(a) of the Social Security Act in the case of a claim filed before August 13, 1981, if liability for the amount of the penalty or assessment could not have been imposed with respect to the claim under section 3729 of title 31, United States Code (relating to false claims).

(b) STATUTE OF LIMITATION ON ACTIONS.—Subsection (b)(1) of such section is amended by adding at the end the following new sentences: "The Secretary may not initiate an action under this section with respect to any claim later than six years after the date the claim was presented. The Secretary may initiate an action under this section by personal service or by mailing by registered or certified mail the notice required by paragraph (2).".

(c) CONFORMING AMENDMENT.—Subsections (b), (c), (f), and (g) of such section are each amended by striking out "penalty or assessment" and inserting in lieu thereof "penalty, assessment, or exclusion" each place it appears.

(d) PRO-RATED PAYMENT OF RECOVERIES TO STATE AGENCIES.—Subsection (e)(1)(A) of such section is amended by striking out "equal to the State's share of the amount paid by the State agency" and inserting in lieu thereof "bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid".

(e) NOTICE TO STATE AGENCIES.—Subsection (g) of such section is further amended by inserting "the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1128(g))," after "professional organization,".

(f) APPLICATION OF SUBPOENA POWER AND INJUNCTIVE POWERS.—Such section is further amended by adding at the end the following new subsections:

"(i) The provisions of subsections (d) and (e) of section 205 shall apply with respect to this section to the same extent as they are applicable with respect to title II.

"(j) Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil mone-

tary penalty under this section, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, or encumbering assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.''.

SEC. 4. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE AND STATE HEALTH CARE PROGRAMS.

(a) TECHNICAL AMENDMENTS.—Section 1909 is amended—

(1) by amending the heading to read as follows: ''CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE OF STATE HEALTH CARE PROGRAMS'';

(2) in subsection (a)(1), by striking out ''a State plan approved under this title'' and inserting in lieu thereof ''a program under title XVIII or a State health care program (as defined in section 1128(g))'';

(3) in the matter in subsection (a) following paragraph (4), by striking out ''this title'' the first place it appears and inserting in lieu thereof ''the program'';

(4) in the last sentence of subsection (a), by striking out ''this title'' the first place it appears and inserting in lieu thereof ''title XIX'', and by striking out ''this title'' the second place it appears and inserting in lieu thereof ''that title'';

(5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and (3)(A) of subsection (b), by striking out "this title" and inserting in lieu thereof "title XVIII or a State health care program" each place it appears;

(6) in subsection (c), by striking out "or home health agency (as those terms are employed in this title)" and inserting in lieu thereof "home health agency, or other entity for which certification is required under title XVIII or a State health care program"; and

(7) in subsection (d), by striking out "this title" and inserting in lieu thereof "title XIX" each place it appears.

(b) REDESIGNATION OF SECTION 1877(d) AS SECTION 1128B(e).—Subsection (d) of section 1877 is redesignated as subsection (e) and is transferred and inserted in section 1909 at the end thereof.

(c) REDESIGNATION OF SECTION 1909 AS SECTION 1128B.—Section 1909, as amended by subsections (a) and (b) of this section, is redesignated as section 1128B and is transferred to title XI and inserted immediately after section 1128A.

(d) REPEAL.—Section 1877 (other than subsection (d) thereof which was transferred under subsection (b) of this section) is repealed.

SEC. 5. INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS.

(a) MEDICAID PLAN REQUIREMENT.—Section 1902(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (45),

(2) by striking out the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by inserting after paragraph (46) the following new paragraph:

"(47) provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 1919.".

(b) INFORMATION REQUIRED.—Title XIX is amended by adding at the end the following new section:

"INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS

"SEC. 1919. (a) INFORMATION REPORTING REQUIREMENT.—The requirement referred to in section 1902(a)(47) is that the State must provide for the following:

"(1) INFORMATION REPORTING SYSTEM.—The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners or entities:

"(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

"(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

"(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

"(2) ACCESS TO DOCUMENTS.—The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circum-

stances concerning the actions and determinations described in such paragraph for the purpose of carrying out this Act.

"(b) FORM OF INFORMATION.—The information described in subsection (a)(1) shall be provided to the Secretary (or, under suitable arrangements made by the Secretary, to another entity) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this Act and in order to provide, directly or through suitable arrangements made by the Secretary, information—

"(1) to licensing authorities described in subsection (a)(1),

"(2) to State agencies administering or supervising the administration of State health care programs (as defined in section 1128(g)),

"(3) to utilization and quality control peer review organizations described in part B of title XI, and

"(4) to State medicaid fraud control units (as defined in section 1903(q)),

in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

"(c) CONFIDENTIALITY OF INFORMATION PROVIDED.—The Secretary shall provide for suitable safeguards for the confidentiality of such of the information furnished under subsection (a) as is not otherwise available to the public.".

SEC. 6. OBLIGATION OF HEALTH CARE PRACTITIONERS AND PROVIDERS.

Section 1156 (42 U.S.C. 1320c-5) is amended—

(1) by striking out "title XVIII" and "such title" in subsection (a) and inserting in lieu thereof "this Act" in each instance, and

(2) by striking out "title XVIII" each place it appears in subsection (b) and inserting in lieu thereof "this Act".

SEC. 7. EXCLUSION UNDER THE MEDICAID PROGRAM.

Section 1902 (42 U.S.C. 1396b) is amended by inserting after subsection (f) the following new subsection:

"(g)(1) In addition to any other authority provided under State law, a State may exclude any individual or entity from participation in the State plan under this title for any reason for which the Secretary could exclude the individual or entity from participation in the programs under title XVIII under section 1128 or 1128A.

"(2) In order for a State to receive payments for medical assistance under section 1903(a), with respect to payments the State makes to a health maintenance organizations

(as defined in section 1903(m)) or to an entity furnishing services under a waiver approved under section 1915(b)(1), the State must provide that it will exclude from participation, as such an organization or entity, any organization or entity that—

"(A) could be excluded under section 1128(b)(4) (relating to owners and managing employees who have been convicted of certain crimes or received other sanctions), or

"(B) has, directly or indirectly, a substantial contractual relationship (as defined by the Secretary) with an individual or entity that is described in section 1128(b)(4)(B).

"(3) As used in this subsection, the term 'exclude' includes the refusal to enter into a participation agreement or the termination of such an agreement.".

SEC. 8. MISCELLANEOUS AND CONFORMING AMENDMENTS.

(a) MATERNAL AND CHILD HEALTH PROGRAM.—Section 504(b) (42 U.S.C. 704(b)) is amended—

(1) by striking out "or" at the end of paragraph (4),

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(3) by adding at the end thereof the following new paragraph:

"(6) payment for any item or service furnished by an individual or entity excluded from participation in the program under this title pursuant to section 1128 or section 1128A.".

(b) DISCLOSURE REQUIREMENTS.—(1) Subsection (a) of section 1126 (42 U.S.C. 1320a-5) is amended—

(A) in the first sentence, by striking out "or other institution" and all that follows through the period at the end and inserting in lieu thereof "or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who has an ownership or control interest (as defined in section 1124(a)(3)) in such entity, or is a managing employee (as defined in subsection (b)) of such entity, and who is or has been excluded or suspended from participation in a program under title XVIII or in a State health care program described in section 1128(g) or has been convicted of any criminal offense on the basis of which the individual or entity may be excluded from a program under section 1128.", and

(B) in the second sentence, by striking out "institution, organization, or agency" and inserting in lieu thereof "entity".

(2) Subsection (b) of such section is amended by striking out "institution, organization, or agency" and inserting in lieu thereof "entity" each place it appears.

(c) MEDICARE PAYMENTS.—(1) Section 1862 (42 U.S.C. 1395y) is amended—

(A) by striking out subsection (d), and

(B) by amending subsection (e) to read as follows:

"(e) No payment may be made under this title with respect to any item or service furnished by an individual or entity during any period when the individual or entity is excluded from participation in a program under this title pursuant to section 1128 or section 1128A.".

(2) Sections 1842(j)(2)(A) and 1862(h)(4) (42 U.S.C. 1395u(j)(2)(A), 1395y(h)(4)) are each amended by striking out "paragraphs (2) and (3) of section 1862(d)" and inserting in lieu thereof "subsections (c), (d), and (f) of section 1128".

(3) Paragraph (3) of section 1886(f) (42 U.S.C. 1395ww(f)) is amended to read as follows:

"(3) The provisions of subsections (c) through (f) of section 1128 shall apply to determinations made under paragraph (2) in the same manner as they apply to exclusions effected under section 1128(b)(2).".

(d) TERMINATION OF PROVIDER AGREEMENTS UNDER MEDICARE.—Section 1866 (42 U.S.C. 1395cc) is amended—

(1) by striking out paragraph (3) of subsection (a);

(2) by amending subsection (b) to read as follows:

"(b)(1) A provider of services may terminate an agreement with the Secretary under this section at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than six months shall not be required.

"(2) The Secretary may refuse to enter into an agreement under this section or, upon such reasonable notice to the provider and the public as may be specified in regulations, may refuse to renew or may terminate such an agreement after the Secretary—

"(A) has determined that the provider fails to comply substantially with the provisions of the agreement, with the provisions of this title and regulations thereunder, or with a corrective action required under section 1886(f)(2)(B),

"(B) has determined that the provider fails substantially to meet the applicable provisions of section 1861, or

"(C) has excluded the provider from participation in a program under this title pursuant to section 1128 or section 1128A.

"(3) A termination of an agreement or a refusal to renew an agreement under this subsection (and a termination

of approval of a supplier under this title) shall be effective on the same date, and with respect to the same items and services, as an exclusion from participation under the programs under this title would become effective under section 1128(c)(1).";

(3) by inserting "or has not been renewed" in paragraphs (1) and (3) of subsection (c) after "terminated"; and

(4) by inserting "or nonrenewal" in subsection (c) after "termination".

(e) OVERLAP WITH MEDICARE SANCTIONS.—Section 1869(c) (42 U.S.C. 1395ff(c)) is amended by inserting before the period at the end thereof the following: ", except that an institution or agency is not entitled to separate notice and opportunity for a hearing under both section 1128 and this section with respect to a determination or determinations based on the same underlying facts and issues".

(f) MEDICAID PLAN REVISIONS.—Section 1902(a) (42 U.S.C. 1396b(a)) is amended—

(1) in paragraph (38), by striking out "respectively, (A)" and all that follows up to the semicolon at the end and inserting in lieu thereof "the information described in section 1128(b)(5)", and

(2) in paragraph (39)—

(A) by striking out "bar" and inserting in lieu thereof "exclude",

(B) by striking out "person" and inserting in lieu thereof "individual or entity" each place it appears, and

(C) by inserting "or section 1128A" after "section 1128".

(g) DENIAL OF FEDERAL FINANCIAL PARTICIPATION UNDER MEDICAID.—Paragraph (2) of section 1903(i) (42 U.S.C. 1396b(i)) is amended to read as follows:

"(2) with respect to any amount expended for items or services furnished under the plan by any individual or entity during any period when the individual or entity is excluded from participation in the State plan under this title pursuant to section 1128 or section 1128A; or".

(h) MEDICAID DISCLOSURE REQUIREMENTS.—Section 1903(n) (42 U.S.C. 1396b(n)) is amended by striking out "has a direct or indirect ownership or control interest of 5 percent or more" and inserting in lieu thereof "is a person with an ownership or control interest (as defined in section 1124(a)(3))".

(i) TITLE XX.—Section 2005(a) (42 U.S.C. 1397d(a)) is amended—

(1) by striking out "or" at the end of paragraph (7),

(2) by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; or", and

(3) by adding at the end thereof the following new paragraph:

"(9) for payment for any item or service furnished by a person excluded from participation in the program under this title pursuant to section 1128 or section 1128A.".

SEC. 9. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act shall become effective at the end of the 14-day period beginning on the date of the enactment of this Act and shall not apply to administrative proceedings commenced before the end of such period.

(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Subparagraph (A) of section 1128(f)(1) of the Social Security Act (as amended by this Act), insofar as it requires an exclusion of not less than five years in the case described in section 1128(a) of that Act, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act.

(c) EFFECTIVE DATE FOR CHANGES IN MEDICAID LAW.—(1) The amendments made by sections 5 and 8(f) apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning more than 30 days after the date of the enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3) Subsection (j) of section 1128A of the Social Security Act (as added by section 3(f) of this Act) takes effect on the date of the enactment of this Act.

(d) REGULATIONS.—Any regulations required to be promulgated by the Secretary of Health and Human Services pursuant to this Act shall be promulgated as final regulations by not later than six months after the date of the enactment of this Act.

SEC. 10. DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION TO MANUFACTURE, DISTRIBUTE, OR DISPENSE A CONTROLLED SUBSTANCE FOR ENTITIES EXCLUDED FROM THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 304(a) of the Controlled Substances Act (21 U.S.C. 824(a)) is amended—

(1) by striking out "or" at the end of paragraph (2),

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or", and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) has been excluded from participation in a program under title XVIII of the Social Security Act pursuant to section 1128(a) of that Act.".

(b) CONFORMING AMENDMENTS TO SOCIAL SECURITY ACT.—Subsections (e)(1) and (f)(4) of section 1128 of the Social Security Act, as amended by section 2 of this Act, are each amended by inserting "(and, in the case of an exclusion effected pursuant to subsection (a) and to which section 304(a)(4) of the Controlled Substances Act may apply, the Attorney General)" after "each State health care program".

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